PUBLIC PROSECUTOR

v.

OOI WANG SAN

COURT OF APPEAL, KUALA LUMPUR
SHAIK DAUD ISMAIL JCA
ABDUL MALEK AHMAD JCA
MOKHTAR SIDIN JCA
[CRIMINAL APPEAL NO: A-05-32 OF 1996]
14 MAY 1998

CRIMINAL PROCEDURE: *Sentence - Principles of - Concurrent or consecutive - Criminal Procedure Code, s. 292 - Matters of consideration - Respondent currently serving sentence for previous crimes - Public policy - Whether sentence should run consecutively*

The respondents, one Ooi Wang San ('Ooi') and three others, were already serving sentences in prison for other offences. While in prison, the respondents were involved in a fight with another inmate which resulted in the latter's death. Upon conviction for the present crime, all four of them were sentenced to 10 years' imprisonment. The learned judge however ruled that Ooi and another Rajendra began serving their sentence from the date the sentence was handed down. For the other two, their sentence was to begin from the day they were arrested.

The prosecution appealed against this decision and requested that the 10-year sentence be served by all the four respondents after completing their current sentences.

It was submitted before this court that Ooi had some 13 previous convictions involving violent crimes. Additionally, the present crime in itself was serious and that it had been pre-planned, and further that it had occurred in prison.

Held:
Per Shaik Daud Ismail JCA

[1] The law on the commencement of sentences of prisoners already undergoing imprisonment is provided *vide* s. 292 of the Criminal Procedure Code. Under this section, the courts have the discretion to order the commencement of the sentence on such convicted persons, either immediately or at the expiration of the imprisonment for which he has been previously sentenced. The exercise of this discretion however is based on the facts and circumstances of each case.

[2] In *Ooi's* matter, he was to be released in the year 2001. As the High Court had decided that his current 10-year sentence was to begin on 4 April 1996, the overlap of several years would not reflect the gravity of the present offence.

[3] A prison is a place where one is rehabilitated, and not to commit further crimes.

[4] In cases of this nature, public interest is the first and foremost consideration. Based on the surrounding facts, public interest would demand a custodial sentence to commensurate with the offence.

[5] Accordingly, the respondents are to serve their 10-year prison term upon the completion of their present sentences.

[Appeal allowed.]

*[**Bahasa Malaysia** Translation of Headnotes]*

Pihak responden, iaitu Ooi Wang San ('Ooi') dan tiga orang lagi, sedang menjalankan hukuman penjara bagi kesalahan-kesalahan lain. Semasa berada di penjara tersebut, mereka telah terlibat dalam suatu perkelahian dengan seorang banduan lain yang sejurusnya terbunuh. Setelah disabitkan dengan pembunuhan tersebut, keempat-empat orang ini telah dihukum penjara selama 10 tahun. Hakim yang bijaksana telah memerintahkan Ooi dan responden yang satu lagi, Rajendra, bahawa tempoh pemenjaraan penahanan mereka bermula dari tarikh keputusan ini dikeluarkan. Manakala, dalam hal dua responden yang lain, tempoh tersebut bermula dari masa penangkapan mereka.

Pihak pendakwa telah merayu ke mahkamah ini atas aduan bahawa tempoh pemenjaraan penahanan mereka, iaitu selama 10 tahun, bermula selepas keempat-empat banduan tersebut selesai menjalankan tempoh pemenjaraan yang kini sedang dijalankan.

Mahkamah ini telah diberitahu bahawa Ooi telah disabitkan dengan 13 kesalahan lain yang berkenaan kelakuan ganas. Tambahan pula, kesalahan kini adalah serius. Ia telah dirancang terlebih dahulu dan ia telah dilakukan di penjara.

Diputuskan:
Oleh Shaik Daud Ismail HMR

[1] Undang-undang yang berkenaan dengan permulaaan tempoh pemenjaraan oleh seorang banduan yang sedang menjalani hukuman penjara terkandung dalam s. 292 Kanun Prosedur Jenayah. Seksyen ini memberikan mahkamah pilihan untuk memerintah samada pemenjaraan seseorang yang tersabit bermula dengan serta-merta atau selepas penamatan tempoh pemenjaraan yang sedang dijalaninya. Penggunaan pilihan bergantung kepada fakta-fakta dan keadaan sesebuah kes.

[2] Dalam hal Ooi, beliau sepatutnya dibebaskan pada tahun 2001. Oleh kerana Mahkamah Tinggi telah menetapkan bahawa tempoh pemenjaraan penahanannya, iaitu selama 10 tahun, akan bermula pada 4 April 1996, maka akan terjadinya tindihan masa selama beberapa tahun. Hal ini tidak akan mencerminkan perkara serius yang berkait dengan kesalahan ini.

[3] Penjara adalah tempat di mana seseorang banduan dipulihkan, dan bukannya tempat untuk melakukan lebih kesalahan.

[4] Dalam kes sebegini rupa, kepentingan awam harus diutamakan. Berpandukan fakta-fakta yang diutarakan, kepentingan awam memestikan bahawa hukuman penjagaan yang setimpal dengan kesalahan yang dilakukan.

[5] Berpandukan hal-hal ini, responden-responden harus menjalani hukuman pemenjaraan penahanan mereka selepas mereka menghabiskan tempoh penjara yang kini sedang dijalankan.

[Rayuan dibenarkan.]

Legislation referred to:
Criminal Procedure Code, s. 292
Penal Code, ss. 34, 302, 304

For the appellant - Zauyah Be Loth Khan
For the respondent - Awtar Singh; M/s Awtar Singh & Co

[Appeal from High Court, Taiping; Criminal Trial No: 55-3 of 1995]

Reported by Bhawani Mano

JUDGMENT

Shaik Daud Ismail JCA:

This was an appeal by the Public Prosecutor against sentence imposed by the High Court against the respondent Ooi Wang San and three others.

The respondent and three others were originally charged before the Taiping High Court on 13 November 1995 for an offence of murder under s. 302 read with s. 34 of the penal Code. When the matter was mentioned on 14 April 1996 the respondent and three others pleaded guilty to an amended charge under s. 304 (1st limb) read with s. 34 of the Penal Code.

After recording the facts of the case, and after hearing pleas of mitigation on behalf of all four, the learned High Court judge sentenced them as follows:

> 10 years imprisonment on all four (including Ooi Wang San) but in the case of Ooi Wang and another, Rajendran a/l Dramalingam, as they are now undergoing prison sentences for another offence, the sentence is to begin from today and as for the other two, sentence is to take effect from their date of arrest.

After hearing submissions by the learned Deputy Public Prosecutor and learned counsel Mr Awtar Singh, we allowed the appeal and ordered that the ten years imprisonment imposed on all four is to take effect after the expiry of the sentences they all are now serving for various other offences.

The respondent Ooi Wang San, not being satisfied with our decision has now appealed to the Federal Court.

As mentioned above, Ooi Wang San with three others pleaded guilty to an amended charge under s. 304 (1st limb) read with s. 34 of the Penal Code, for causing the death of one Jolianos a/l Joseph on 8 July 1995 at about 2pm in Taiping prison. The facts as given by the prosecution showed that on 8 July 1995 at about 2pm while some 170 prisoners from Block B of Taiping Prison, and 263 prisoners from Block C were enjoying their recreation period, there occurred a commotion involving Ooi Wang San, the three others and the deceased. The four of them were seen to attack the deceased. The deceased was seen to run away covered with blood and being chased by the four assailants who were armed with some kind of sharp instruments. The warders managed to stop the four when the deceased fell to the ground covered in blood. Eventually all four were disarmed. The deceased succumbed to his injuries at 4pm the same day. Investigations revealed that all the four sharp instruments used to attack deceased were all made in the prison workshops. Post mortem examinations revealed that deceased had several stab wounds one

of which penetrated his chest and lacerated his right lung. The cause of death was "lung laceration with lung collapse with haemothorax causing hyporolemic shock". Investigations also revealed that the attack on deceased was a result of revenge against the deceased who had on 1 June 1995, stabbed one of the four and another person called Mohan a/l Lingam, a friend of the four.

Learned counsel for Ooi Wang San in mitigation submitted that he was 39 years of age, married with three children and he was then undergoing a term of imprisonment for another offence which term was due to end in the year 2001 and prayed for a light sentence to take effect from the date of his arrest.

The law on the commencement of sentences of imprisonment on prisoners already undergoing imprisonment, as in this case, is provided for in s. 292 of the Criminal Procedure Code. This provision gives a discretion to the court, depending on the facts and circumstances of each particular case, whether to order the commencement of the sentence on such convicted persons, either immediately or at the expiration of the imprisonment to which he has been previously sentenced.

In the case of Ooi Wang San, the court sentenced him to 10 years to take effect from the date of the sentence ie, 4 April 1996. Since he was due to be released in the year 2001, there would be an overlap of several years. This to our mind certainly did not reflect the gravity of the offence. Furthermore, he had some 13 previous convictions dating from 1986 to 1992, most of which were offences involving violence such as armed robbery and gang robbery. The court also accepted that the present offence was serious and that it was pre-planned and that it occurred in prison. The court also accepted that a prison is a place of rehabilitation and not to commit further crimes, and yet the law did not consider or sufficiently consider public interest. In a case of this nature, the first and foremost consideration is the public interest. On the facts and circumstances of this case, public interest demands a custodial sentence to commensurate with the offence. In the light of this we ordered that the sentence of 10 years imprisonment imposed on Ooi Wang San and the other three, to take effect after they had served their present sentences for other offences.